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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 AMERICAN CIVIL LIBERTIES
4 UNION,

Plaintiff,

New York, N.Y.

5 v.

19 Civ. 11311 (JSR)

6 U.S. CUSTOMS AND BORDER
7 PROTECTION, U.S. IMMIGRATION
8 AND CUSTOMS ENFORCEMENT,

Defendants.

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Conference

10 February 3, 2020
11 11:40 a.m.

12 Before:

13 HON. JED S. RAKOFF,

14 District Judge

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16 APPEARANCES

17
18 NATHAN FREED WESSLER
19 ALEXIA RAMIREZ
20 ROBERT HODGSON
Attorneys for Plaintiff

21 GEOFFREY S. BERMAN
22 United States Attorney for the
23 Southern District of New York
CASEY KYUNG-SE LEE
24 Assistant United States Attorney
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(Case called)

THE DEPUTY CLERK: Will the parties please identify themselves for the record.

MR. WESSLER: Good morning, your Honor. Nathan Freed Wessler for plaintiff ACLU.

MS. RAMIREZ: Alexia Ramirez for ACLU.

MR. HODGSON: Robert Hodgson for ACLU.

MR. LEE: Good morning, your Honor. Casey Lee for the defendants.

THE COURT: Good morning.

Do you have a proposed schedule?

MR. LEE: I believe we do, your Honor. So I believe that we currently have a proposal whereby defendants will report the results of their searches, they are currently performing new searches in response to plaintiff's FOIA request, and all of that information by February 17.

THE COURT: Okay.

MR. LEE: Defendant ICE is able to make an initial production by March 3. Currently Customs and Border Protection is, unfortunately, still in the midst of trying to understand its volume of responsive records and at this time is unable to commit to a specific production.

THE COURT: Well, we are just going to have to set a date. Whether they commit or not is of no interest to me. This is a court of law. We need an exact date, so we will set

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1 a date for them to respond, which is March 3.

2 MR. LEE: Understood, your Honor.

3 THE COURT: Anything else?

4 MR. LEE: Not from the government.

5 THE COURT: Okay. Eventually is there going to be a
6 summary judgment?

7 MR. LEE: That is our expectation.

8 THE COURT: So let's set a date for that. Both sides
9 presumably will be filing summary judgment in this kind of
10 case, so moving papers on March 23, reply papers on April 6 --
11 excuse me, answering papers on April 6, reply papers on April
12 13, and we will have an oral argument on April 20 at 10 a.m.

13 MR. LEE: Your Honor, I would like to propose, given
14 that we still don't know the volume of records yet, that we --

15 THE COURT: I propose that the government pay greater
16 attention to this request and find out the volume. That
17 doesn't seem to me to be a very difficult thing in this whole
18 electronic age. In everyday cases involving corporations, they
19 can tell me in 24 hours or less what the volume is. Is the
20 government that technologically backward?

21 MR. LEE: No, your Honor.

22 THE COURT: Good. I stick by my schedule and that
23 will be enforced.

24 MR. LEE: Understood, your Honor.

25 THE COURT: Anything else?

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1 MR. WESSLER: Your Honor, we don't expect to be
2 seeking discovery, but because --

3 THE COURT: I don't expect you will be seeking
4 discovery either, so don't waste my time on that except the
5 most extreme circumstances.

6 MR. WESSLER: Your Honor, I just -- we don't think
7 there is a need to set a schedule for that now, but I just want
8 to note that CBP initially told us twice that they conducted
9 searches and found no responsive records. We find that to be
10 completely incredible. We would just like to note that if a
11 similar response comes back from them, we may think it is
12 appropriate to ask for the court's leave to seek limited to
13 discovery on how they conducted the search.

14 THE COURT: My usual practice in that situation is to
15 have the person who is saying that come into court under oath,
16 and I question them.

17 MR. WESSLER: Understood, your Honor.

18 THE COURT: Anything else?

19 MR. LEE: Not from defendants, your Honor.

20 THE COURT: Very good. Thanks a lot.

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